

REMARKS

In the Office Action mailed September 9, 2004 Examiner objected to claims 1 and 12 for use of the phrase "may be inserted" and rejected all the claims, as anticipated by the Bane, Hull and Lewis references. Specifically, independent claims 1 and 12 were rejected for failing to positively recite structure relating to how the hole in the handle is adapted to receive a digit such as a finger inserted through the hole. Consequently, Examiner's cited Bane, Hull and Lewis showing holes in the handles of tools citing the further claim limitations as reading on that prior art. The Examiner's opinion that the digit may be inserted through the hole did not constitute a positive limitation, Examiner opining that it was merely a recitation of intended use or purpose for the hole that did not further limit the hole structure.

Independent claims 1 and 12 are now amended to patentably distinguish over the prior art of record, that is, to recite in positively recited structure how the hole in the handle is adapted to uniquely cooperate with a digit inserted through the hole. The cited Hull, Lewis, Her and Lee references only disclose the use of a tool having a hole into which a secondary rigid tool such as the elongated members 24 and 34 of Hull, the torque-handle 20 of Lewis, the spoon-shaped member 80 of Her, and the tongs portion 1 of Lee are inserted. It is neither taught nor suggested in the prior art of record to insert a digit such as a finger into the hole in order to forcefully operate the tool, and it would be counter-intuitive in the prior art to do so as a human digit is a very poor, bordering on useless, substitute for a rigid secondary tool such as a lever or wrench. A human digit cannot offer significant rigidity to apply a meaningful force such as bending moment or torque to the primary tool, that is, the tool with the hole in it. Consequently, it is fair to say that prior art requiring the use of rigid secondary tools which are inserted into a hole in the primary tool would lead one skilled in the art away from the present invention as now defined in amended claims 1 and 12.

Claims 1 and 12 are amended to include structure unique to the use of a rigid tool having a handle with a transverse hole through it where the intended use of the hole is for the insertion of a digit through the hole so that the handle may be either rotated about the finger or the handle comfortably grasped for operation of the driving tool mounted to the ends of the

handle. Specifically, the handle is shaped with a concavity around the end of the hole through which the digit is inserted. The use of a concavity such as the depression around each opening as illustrated, the waisting of the handle, etc rounds abrupt or sharp edges all around the opening of the hole and provides a smooth relatively wide bearing surface to rest against the knuckle where the digit, for example such as a finger joins the palm, so that the skin of the digit will not be abraded or injured during use of the tool when pressure is applied or the tool rotated about the digit while resting on the knuckle. The above-cited prior art teaches holes having abrupt or sharp edges because the intended and taught use is with rigid secondary tools which not only will not be abraded or injured in the manner of human skin by the edges of the hole, but will operate more effectively, particularly lever arms, the prior and thus once again teaching away from the claimed limitations of the amended independent claims.

The Bane reference discloses inserting a lanyard 48 through transverse aperture 47 in the marlin spike portion 24 of the tool. The taught use of the lanyard is to secure the tool to the tool pouch if the tool is dropped. There is no suggestion of use of aperture 47 for anything other than a hole through which to tie the lanyard. It is neither taught, suggested nor possible to use a lanyard in the manner disclosed to operate the driving tools such as the hammer or screwdriver and thus Barre would not have been faced with the problem solved by the tool according to the present invention; namely, how to provide for application of force to the driving tool by insertion of a digit through a transverse hole in a tool handle, and how to rotate the tool handle about the digit when inserted through the hole, without abrading or injuring the skin of the digit. In the drawings of the Bane reference, notably in Figures 2, 3 and 5, although not described in the written specification, what might possibly be characterized as beveling is depicted on two opposite sides of the opening into aperture 47. The beveling, if that is what it is, clearly does not extend fully or completely around the opening to the aperture. It is submitted that it would not be expected that such would be the case in the Bane tool as there is no suggestions that the aperture be sized to insert a human digit through the aperture (a lanyard that thick would be both unnecessary and cumbersome), let alone rotate the tool about the digit when inserted through the aperture.

Claim 19 is patentable for at least the reason that it depends indirectly from independent claim 12 and thus, as it includes all of the limitations of claim 12 patentably distinguishes over the prior art.

In the Drawings

Applicant submits proposed changes to Figures 5a-7a, in order to comply with 37 CFR 1.121(d). Applicant requests that the Examiner consider the changes. Formal drawings will be submitted upon allowance.

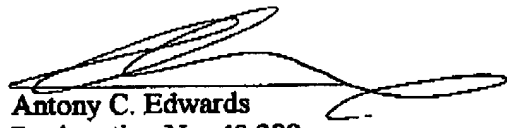
REQUEST FOR EXTENSION OF TIME UNDER 37 CFR, SECTION 1.136

Applicant hereby requests a 2 month extension of time to respond to the Office Action to and through February 9, 2005.

Examiner is respectfully requested to now pass this application to allowance.

Respectfully submitted,  
Gary Richard Clarke et al.

By:

  
Antony C. Edwards  
Registration No. 40,288

February 9, 2005  
ACE/mh

800 - 1708 Dolphin Avenue  
Kelowna, British Columbia, Canada  
V1Y 9S4

Telephone: (250) 861-5332  
Facsimile: (250) 861-8772

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

MICHELLE HARDY  
Name of Person Signing Certification

[Signature]  
Signature

Feb 9/05  
Date

02/10/2005 BBONNER 00000025 10718594

01 FC:2252

225.00 0P

NOT AVAILABLE COPY